

**IN THE UNITED STATES DISTRICT COURT
FOR THE SOUTHERN DISTRICT OF MISSISSIPPI
SOUTHERN DISTRICT**

ABRA HORN

PLAINTIFF

VERSUS

CIVIL ACTION NO.: 1:08cv41LG-JMR

**HARRISON COUNTY, et al.;
SHERIFF GEORGE H. PAYNE, JR.;
WARDEN DONALD A. CABANA;
CHAPLAIN JOE COLLINS;
RHONDALYN ROGERS;
KARL STOLZE and RICK GASTON,
Former Deputies**

DEFENDANTS

**DEFENDANT RICK GASTON'S MEMORANDUM IN SUPPORT OF HIS
MOTION TO DISMISS
PURSUANT TO FEDERAL RULES OF CIVIL PROCEDURE 4(m)**

COMES NOW, RICK GASTON, by and through his undersigned counsel, and respectfully requests that this Court dismiss the above lawsuit without prejudice for failure to timely serve process under Rule 4(m) of the Federal Rules of Civil Procedure, and submits this memorandum in support of his motion, to wit:

I.

The Plaintiff filed a Complaint on February 08, 2008 in the United States Federal District Court for the Southern District of Mississippi, Southern Division.

II.

To date, Captain Rick Gaston has not been served with process in the above styled cause.

III.

One Hundred Twenty (120) days have passed since the filing of the Complaint in the above styled cause.

IV.

Rule 4(m) of the Federal Rules of Civil Procedure require the Defendant be served within one hundred twenty (120) days. If the Defendant is not served within that time period, the Court must dismiss the action without prejudice. Since Defendant Rick Gaston has not been served within one hundred twenty (120) days, dismissal without prejudice is proper.

WHEREFORE PREMISES CONSIDERED, your Defendant, RICK GASTON, respectfully requests this Court dismiss him from the above styled lawsuit without prejudice due to Plaintiff's untimely service of process on him as required under Rule 4 of the Federal Rules of Civil Procedure.

RESPECTFULLY SUBMITTED, this, the 9th day of June 2008.

RICK GASTON, Defendant

By: /s/Ian Brendel
IAN BRENDDEL
Attorney for Defendant

CERTIFICATE OF SERVICE

I, Jim Davis, do hereby certify that I have this day electronically filed a true and correct copy of the above and foregoing ***MOTION TO DISMISS***, with the Clerk of Court using the ECF system, which sent notification of such filing to the following:

Michael W. Crosby, Esquire
2111 - 25th Avenue
Gulfport, MS 39501

Honorable Louis Guirola, Jr.
United States District Judge
Dan M. Russell, Jr. U.S. Courthouse
2012 15th Street, Suite 814
Gulfport, MS 39501

Honorable John M. Roper
United States Magistrate Judge
Dan M. Russell, Jr. U.S. Courthouse
2012 15th Street, Suite 870
Gulfport, MS 39501

This the 9th day of June 2008.

BY: /s/Ian Brendel
IAN BRENDDEL

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